NATIONAL LABOR RELATIONS BOARD *v.* FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 88. Argued February 18–19, 1964.—Decided April 20, 1964.

Respondent union, while on strike, conducted a consumer boycott of the employers' products, pursuant to which it engaged in peaceful picketing and distributed handbills at markets selling such products. The signs and handbills asked the public not to purchase primary employers' products. The National Labor Relations Board held that § 8 (b) (4) of the National Labor Relations Act was intended by Congress to prohibit all consumer picketing at secondary establishments. The Court of Appeals rejected that conclusion, holding that the crucial issue is whether the secondary employer is in fact coerced or threatened by the picketing, and remanded for a finding on that issue. *Held:* Peaceful secondary picketing of retail stores directed solely at appealing to consumers to refrain from buying the primary employer's product is not prohibited by § 8 (b) (4). Pp. 63–73.

113 U. S. App. D. C. 356, 308 F. 2d 311, judgment vacated and case remanded.

Solicitor General Cox argued the cause for petitioner. With him on the brief were *Arnold Ordman, Dominick L. Manoli* and *Norton J. Come.*

David Previant argued the cause for respondents. With him on the brief were *Hugh Hafer* and *Richard P. Donaldson.*

Alfred J. Schweppe and *Mary Ellen Krug* filed a brief for the Tree Fruits Labor Relations Committee, Inc., as *amicus curiae,* urging reversal.

J. Albert Woll, Robert C. Mayer, Theodore J. St. Antoine and *Thomas E. Harris* filed a brief for the American Federation of Labor and Congress of Industrial Organizations, as *amicus curiae,* urging affirmance.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Under § 8 (b)(4)(ii)(B) of the National Labor Relations Act, as amended,[1] it is an unfair labor practice for a union "to threaten, coerce, or restrain any person," with the object of "forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer . . . or to cease doing business with any other person . . . ." A proviso excepts, however, "publicity, *other than picketing,* for the purpose of truthfully advising the public . . . that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution." (Italics supplied.) The question in this case is whether the respondent unions violated this section when they limited their secondary picketing of retail stores to an appeal to the customers of the stores not to buy the products of certain firms against which one of the respondents was on strike.

Respondent Local 760 called a strike against fruit packers and warehousemen doing business in Yakima, Washington.[2] The struck firms sold Washington State

[1] As amended by the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act) § 704 (a), 73 Stat. 542–543, 29 U. S. C. (Supp. IV, 1963) § 158 (b)(4).

[2] The firms, 24 in number, are members of the Tree Fruits Labor Relations Committee, Inc., which acts as the members' agent in labor disputes and in collective bargaining with unions which represent employees of the members. The strike was called in a dispute over the terms of the renewal of a collective bargaining agreement.

apples to the Safeway chain of retail stores in and about Seattle, Washington. Local 760, aided by respondent Joint Council, instituted a consumer boycott against the apples in support of the strike. They placed pickets who walked back and forth before the customers' entrances of 46 Safeway stores in Seattle. The pickets—two at each of 45 stores and three at the 46th store—wore placards and distributed handbills which appealed to Safeway customers, and to the public generally, to refrain from buying Washington State apples, which were only one of numerous food products sold in the stores.[3]

[3] The placard worn by each picket stated: "To the Consumer: Non-Union Washington State apples are being sold at this store. Please do not purchase such apples. Thank you. Teamsters Local 760, Yakima, Washington."

A typical handbill read:

"DON'T BUY
WASHINGTON STATE
APPLES

THE 1960 CROP OF WASHINGTON STATE APPLES IS BEING PACKED BY NON-UNION FIRMS

Included in this non-union operation are twenty-six firms in the Yakima Valley with which there is a labor dispute. These firms are charged with being

UNFAIR

by their employees who, with their union, are on strike and have been replaced by non-union strikebreaking workers employed under substandard wage scales and working conditions.

In justice to these striking union workers who are attempting to protect their living standards and their right to engage in good-faith collective bargaining, we request that you

DON'T BUY
WASHINGTON STATE
APPLES

TEAMSTERS UNION LOCAL 760
YAKIMA, WASHINGTON

This is not a strike against any store or market.

(P.S.—PACIFIC FRUIT & PRODUCE CO. is the only firm packing Washington State Apples under a union contract.)"

Before the pickets appeared at any store, a letter was delivered to the store manager informing him that the picketing was only an appeal to his customers not to buy Washington State apples, and that the pickets were being expressly instructed "to patrol peacefully in front of the consumer entrances of the store, to stay away from the delivery entrances and not to interfere with the work of your employees, or with deliveries to or pickups from your store." A copy of written instructions to the pickets—which included the explicit statement that "you are also forbidden to request that the customers not patronize the store"—was enclosed with the letter.[4] Since it was desired to assure Safeway employees that they were not to cease work, and to avoid any interference with pickups or deliveries, the pickets appeared after the stores opened for business and departed before the stores closed. At all times during the picketing, the store employees continued to work, and no deliveries or pickups were obstructed. Washington State apples were handled in normal course by both Safeway employees and the employees of other employers involved. Ingress and egress by customers and others was not interfered with in any manner.

A complaint issued on charges that this conduct violated § 8 (b)(4) as amended.[5] The case was submitted directly to the National Labor Relations Board on a stipulation of facts and the waiver of a hearing and proceedings before a Trial Examiner. The Board held, following

[4] Copies of the letter delivered to each store manager and of the instructions to pickets are printed in the Appendix.

[5] The complaint charged violations of both subsections (i) and (ii) of § 8 (b)(4). The Board held, however, that as the evidence indicated "that Respondents' picketing was directed at consumers only, and was not intended to 'induce or encourage' employees of Safeway or of its suppliers to engage in any kind of action, we find that by such picketing Respondents did not violate Section 8 (b)(4)(i)(B) of the Act." 132 N. L. R. B., at 1177. See also *Labor Board* v. *Servette, Inc., ante,* p. 46, decided today.

its construction of the statute in *Upholsterers Frame & Bedding Workers Twin City Local No. 61*, 132 N. L. R. B. 40, that "by literal wording of the proviso [to Section 8 (b)(4)] as well as through the interpretive gloss placed thereon by its drafters, consumer picketing in front of a secondary establishment is prohibited." 132 N. L. R. B. 1172, 1177.[6] Upon respondents' petition for review and the Board's cross-petition for enforcement, the Court of Appeals for the District of Columbia Circuit set aside the Board's order and remanded. The court rejected the Board's construction and held that the statutory requirement of a showing that respondents' conduct would "threaten, coerce, or restrain" Safeway could only be satisfied by affirmative proof that a substantial economic impact on Safeway had occurred, or was likely to occur as a result of the conduct. Under the remand the Board was left "free to reopen the record to receive evidence upon the issue whether Safeway was in fact threatened, coerced, or restrained." 113 U. S. App. D. C. 356, 363, 308 F. 2d 311, 318. We granted certiorari, 374 U. S. 804.

The Board's reading of the statute—that the legislative history and the phrase "other than picketing" in the proviso reveal a congressional purpose to outlaw all picketing directed at customers at a secondary site—necessarily rested on the finding that Congress determined that such picketing always threatens, coerces or restrains the secondary employer. We therefore have a special responsibility to examine the legislative history for confirmation that Congress made that determination. Throughout the history of federal regulation of labor relations, Congress has consistently refused to prohibit peaceful picketing except where it is used as a means to achieve specific ends which experience has shown are undesirable. "In the sensitive area of peaceful picketing Congress has

[6] Accord: *Burr & Perfection Mattress Co.* v. *Labor Board*, 321 F. 2d 612 (C. A. 5th Cir.).

dealt explicitly with isolated evils which experience has established flow from such picketing." *Labor Board* v. *Drivers Local Union*, 362 U. S. 274, 284. We have recognized this congressional practice and have not ascribed to Congress a purpose to outlaw peaceful picketing unless "there is the clearest indication in the legislative history," *ibid.*, that Congress intended to do so as regards the particular ends of the picketing under review. Both the congressional policy and our adherence to this principle of interpretation reflect concern that a broad ban against peaceful picketing might collide with the guarantees of the First Amendment.

We have examined the legislative history of the amendments to § 8 (b)(4), and conclude that it does not reflect with the requisite clarity a congressional plan to proscribe all peaceful consumer picketing at secondary sites, and, particularly, any concern with peaceful picketing when it is limited, as here, to persuading Safeway customers not to buy Washington State apples when they traded in the Safeway stores. All that the legislative history shows in the way of an "isolated evil" believed to require proscription of peaceful consumer picketing at secondary sites, was its use to persuade the customers of the secondary employer to cease trading with him in order to force him to cease dealing with, or to put pressure upon, the primary employer. This narrow focus reflects the difference between such conduct and peaceful picketing at the secondary site directed only at the struck product. In the latter case, the union's appeal to the public is confined to its dispute with the primary employer, since the public is not asked to withhold its patronage from the secondary employer, but only to boycott the primary employer's goods. On the other hand, a union appeal to the public at the secondary site not to trade at all with the secondary employer goes beyond the goods of the primary employer, and seeks the public's assistance in

forcing the secondary employer to cooperate with the union in its primary dispute.[7] This is not to say that this distinction was expressly alluded to in the debates. It is to say, however, that the consumer picketing carried on in this case is not attended by the abuses at which the statute was directed.

The story of the 1959 amendments, which we have detailed at greater length in our opinion filed today in *Labor Board* v. *Servette, Inc., ante,* p. 46, begins with the original § 8 (b)(4) of the National Labor Relations Act. Its prohibition, in pertinent part, was confined to the inducing or encouraging of "the employees of any employer to engage in, a strike or a concerted refusal . . . to . . . handle . . . any goods . . ." of a primary employer. This proved to be inept language. Three major loopholes were revealed. Since only inducement of "employees" was proscribed, direct inducement of a supervisor or the secondary employer by threats of labor trouble was not prohibited. Since only a "strike or a concerted refusal" was prohibited, pressure upon a single employee was not forbidden. Finally, railroads, airlines

[7] The distinction between picketing a secondary employer merely to "follow the struck goods," and picketing designed to result in a generalized loss of patronage, was well established in the state cases by 1940. The distinction was sometimes justified on the ground that the secondary employer, who was presumed to receive a competitive benefit from the primary employer's nonunion, and hence lower, wage scales, was in "unity of interest" with the primary employer, *Goldfinger* v. *Feintuch,* 276 N. Y. 281, 286, 11 N. E. 2d 910, 913; *Newark Ladder & Bracket Sales Co.* v. *Furniture Workers Local 66,* 125 N. J. Eq. 99, 4 A. 2d 49; *Johnson* v. *Milk Drivers & Dairy Employees Union, Local 854,* 195 So. 791 (Ct. App. La.), and sometimes on the ground that picketing restricted to the primary employer's product is "a primary boycott against the merchandise." *Chiate* v. *United Cannery Agricultural Packing & Allied Workers of America,* 2 CCH Lab. Cas. 125, 126 (Cal. Super. Ct.). See I Teller, Labor Disputes and Collective Bargaining § 123 (1940).

and municipalities were not "employers" under the Act and therefore inducement or encouragement of their employees was not unlawful.

When major labor relations legislation was being considered in 1958, the closing of these loopholes was important to the House and to some members of the Senate. But the prevailing Senate sentiment favored new legislation primarily concerned with the redress of other abuses, and neither the Kennedy-Ives bill, which failed of passage in the House in the Eighty-fifth Congress, nor the Kennedy-Ervin bill, adopted by the Senate in the Eighty-sixth Congress, included any revision of § 8(b)(4). Proposed amendments of § 8 (b)(4) offered by several Senators to fill the three loopholes were rejected. The Administration introduced such a bill, and it was supported by Senators Dirksen and Goldwater.[8] Senator Goldwater, an insistent proponent of stiff boycott curbs, also proposed his own amendments.[9] We think it is especially significant that neither Senator, nor the Secretary of Labor in testifying in support of the Administration's bill, referred to consumer picketing as making the amendments necessary.[10] Senator McClellan, who also

[8] S. 748, 105 Cong. Rec. 1259–1293, II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 975, 987.

[9] 105 Cong. Rec. 6190, II Leg. Hist. 1034.

[10] 105 Cong. Rec. 1283, 6428, II Leg. Hist. 979, 1079 (Senator Goldwater); 105 Cong. Rec. 1729–1730, II Leg. Hist. 993–994 (remarks of the Secretary of Labor, inserted in the record by Senator Dirksen).

It is true that Senator Goldwater referred to consumer picketing when the Conference bill was before the Senate. His full statement reads as follows: "the House bill . . . closed up every loophole in the boycott section of the law including the use of a secondary consumer picket line, an example of which the President gave on his nationwide TV program on August 6. . . ." 105 Cong. Rec. 17904, II Leg. Hist. 1437. The example given by the President was this: "The employees [of a furniture manufacturer] vote against joining a particular union. Instead of picketing the furniture plant itself, un-

offered a bill to curb boycotts, mentioned consumer picketing but only such as was "pressure in the form of dissuading customers *from dealing with* secondary employers." [11] (Emphasis supplied.) It was the opponents of the amendments who, in expressing fear of their sweep, suggested that they might proscribe consumer picketing. Senator Humphrey first sounded the warning early in April.[12] Many months later, when the Conference bill was before the Senate, Senator Morse, a conferee, would not support the Conference bill on the express ground that it prohibited consumer picketing.[13] But we have often cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach. "The fears and doubts of the opposition are no authoritative guide to the construction of legislation. It is the sponsors that we look to when the meaning of the statutory words is in doubt." *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U. S. 384, 394–395; see also *Mastro Plastics Corp.* v. *Labor Board*, 350 U. S. 270, 288; *United States* v. *Calamaro*, 354 U. S. 351, n. 9, at 358. The silence of the sponsors of amendments is pregnant with significance

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scrupulous organizing officials . . . picket the stores which sell the furniture . . . . How can anyone justify this kind of pressure against stores which are not involved in any dispute? . . . This kind of action is designed to make the stores bring pressure on the furniture plant and its employees . . . ." 105 Cong. Rec. 19954, II Leg. Hist. 1842. Senator Goldwater's own definition of what he meant by a secondary consumer boycott is even more clearly narrow in scope: "A secondary consumer, or customer, boycott involves the refusal of consumers or customers to buy the products or services of one employer in order to force him to stop doing business with another employer." 105 Cong. Rec. 17674, II Leg. Hist. 1386.

[11] 105 Cong. Rec. 6667, II Leg. Hist. 1194.

[12] 105 Cong. Rec. 6232, II Leg. Hist. 1037.

[13] 105 Cong. Rec. 17882–17883, II Leg. Hist. 1426.

since they must have been aware that consumer picketing as such had been held to be outside the reach of § 8 (b)(4).[14] We are faithful to our practice of respecting the congressional policy of legislating only against clearly identified abuses of peaceful picketing when we conclude that the Senate neither specified the kind of picketing here involved as an abuse, nor indicated any intention of banning all consumer picketing.

The House history is similarly beclouded, but what appears confirms our conclusion. From the outset the House legislation included provisions concerning secondary boycotts. The Landrum-Griffin bill,[15] which was ultimately passed by the House, embodied the Eisenhower Administration's proposals as to secondary boycotts. The initial statement of Congressman Griffin in introducing the bill which bears his name, contains no reference to consumer picketing in the list of abuses which he thought required the secondary boycott amendments.[16] Later in the House debates he did discuss consumer picketing, but only in the context of its abuse when directed against shutting off the patronage of a secondary employer.

In the debates before passage of the House bill he stated that the amendments applied to consumer picketing of customer entrances to retail stores selling goods manufactured by a concern under strike, if the picketing

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[14] *United Wholesale & Warehouse Employees, Local 261,* v. *Labor Board,* 108 U. S. App. D. C. 341, 282 F. 2d 824; *Labor Board* v. *International Union of Brewery Workers,* 272 F. 2d 817, 819 (C. A. 10th Cir.); *Labor Board* v. *Business Machine & Office Appliance Mechanics Conference Board,* 228 F. 2d 553, 559–561 (C. A. 2d Cir.), cert. denied, 351 U. S. 962.

[15] The Landrum-Griffin bill, H. R. 8400, was substituted on the floor of the House for the bill reported by the House Committee on Education and Labor, H. R. 8342; the language of the two bills with respect to secondary boycotts is compared at II Leg. Hist. 1912.

[16] 105 Cong. Rec. 15531–15532, II Leg. Hist. 1568.

were designed to "coerce or to restrain the employer of [the] second establishment, to get him not to do business with the manufacturer . . . ," and further that, "of course, this bill and any other bill is limited by the constitutional right of free speech. If the purpose of the picketing is to *coerce the retailer not to do business* with the manufacturer"—then such a boycott could be stopped.[17] (Italics supplied.)

The relevant changes in former § 8 (b)(4) made by the House bill substituted "any individual employed by any person" for the Taft-Hartley wording, "the employees of any employer," deleted the requirement of a "concerted" refusal, and made it an unfair labor practice "to threaten, coerce, or restrain any person" where an object thereof was an end forbidden by the statute, *e. g.*, forcing or requiring a secondary employer to cease handling the products of, or doing business with, a primary employer. There is thus nothing in the legislative history prior to the convening of the Conference Committee which shows any congressional concern with consumer picketing beyond that with the "isolated evil" of its use to cut off the business of a secondary employer as a means of forcing him to stop doing business with the primary employer. When Congress meant to bar picketing *per se*, it made its meaning clear; for example, § 8 (b)(7) makes it an unfair labor practice, "to picket or cause to be picketed . . . any employer . . . ." In contrast, the prohibition of § 8 (b)(4) is keyed to the coercive nature of the conduct, whether it be picketing or otherwise.

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[17] 105 Cong. Rec. 15673, II Leg. Hist. 1615. The same concern with direct coercion of secondary employers appears in President Eisenhower's message accompanying the Administration bill. S. Doc. No. 10, 86th Cong., 1st Sess., I Leg. Hist. 81–82. See also minority report of the Senate Committee on the Kennedy-Ervin bill. S. Rep. No. 187, 86th Cong., 1st Sess., I Leg. Hist. 474–475.

Senator Kennedy presided over the Conference Committee. He and Congressman Thompson prepared a joint analysis of the Senate and House bills. This analysis pointed up the First Amendment implications of the broad language in the House revisions of § 8 (b)(4) stating,

> "The prohibition [of the House bill] reaches not only picketing but leaflets, radio broadcasts and newspaper advertisements, thereby interfering with freedom of speech.
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> . . . . .
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> ". . . one of the apparent purposes of the amendment is to prevent unions from appealing to the general public as consumers for assistance in a labor dispute. This is a basic infringement upon freedom of expression." [18]

This analysis was the first step in the development of the publicity proviso, but nothing in the legislative history of the proviso alters our conclusion that Congress did not clearly express an intention that amended § 8 (b)(4) should prohibit all consumer picketing. Because of the sweeping language of the House bill, and its implications for freedom of speech, the Senate conferees refused to accede to the House proposal without safeguards for the right of unions to appeal to the public, even by some conduct which might be "coercive." The result was the addition of the proviso. But it does not follow from the fact that some coercive conduct was protected by the proviso, that the exception "other than picketing" indicates that Congress had determined that all consumer picketing was coercive.

No Conference Report was before the Senate when it passed the compromise bill, and it had the benefit

[18] 105 Cong. Rec. 16591, II Leg. Hist. 1708.

only of Senator Kennedy's statement of the purpose of the proviso. He said that the proviso preserved "the right to appeal to consumers by methods other than picketing asking them to refrain from buying goods made by nonunion labor *and* to refrain from trading with a retailer who sells such goods. . . . We were not able to persuade the House conferees to permit picketing in front of that secondary shop, but were able to persuade them to agree that the union shall be free to conduct informational activity short of picketing. In other words, the union can hand out handbills at the shop . . . and can carry on all publicity short of having ambulatory picketing . . . ." [19] (Italics supplied.) This explanation does not compel the conclusion that the Conference Agreement contemplated prohibiting any consumer picketing at a secondary site beyond that which urges the public, in Senator Kennedy's words, to "refrain from trading with a retailer who sells such goods." To read into the Conference Agreement, on the basis of a single statement, an intention to prohibit all consumer picketing at a secondary site would depart from our practice of respecting the congressional policy not to prohibit peaceful picketing except to curb "isolated evils" spelled out by the Congress itself.

Peaceful consumer picketing to shut off all trade with the secondary employer unless he aids the union in its dispute with the primary employer, is poles apart from such picketing which only persuades his customers not to buy the struck product. The proviso indicates no more than that the Senate conferees' constitutional doubts led Congress to authorize publicity other than picketing which persuades the customers of a secondary employer to stop all trading with him, but not such publicity which has

[19] 105 Cong. Rec. 17898–17899, II Leg. Hist. 1432.

the effect of cutting off his deliveries or inducing his employees to cease work. On the other hand, picketing which persuades the customers of a secondary employer to stop all trading with him was also to be barred.

In sum, the legislative history does not support the Board's finding that Congress meant to prohibit all consumer picketing at a secondary site, having determined that such picketing necessarily threatened, coerced or restrained the secondary employer. Rather, the history shows that Congress was following its usual practice of legislating against peaceful picketing only to curb "isolated evils."

This distinction is opposed as "unrealistic" because, it is urged, all picketing automatically provokes the public to stay away from the picketed establishment. The public will, it is said, neither read the signs and handbills, nor note the explicit injunction that "This is not a strike against any store or market." Be that as it may, our holding today simply takes note of the fact that Congress has never adopted a broad condemnation of peaceful picketing, such as that urged upon us by petitioners, and an intention to do so is not revealed with that "clearest indication in the legislative history," which we require. *Labor Board* v. *Drivers Local Union, supra.*

We come then to the question whether the picketing in this case, confined as it was to persuading customers to cease buying the product of the primary employer, falls within the area of secondary consumer picketing which Congress did clearly indicate its intention to prohibit under § 8 (b)(4)(ii). We hold that it did not fall within that area, and therefore did not "threaten, coerce, or restrain" Safeway. While any diminution in Safeway's purchases of apples due to a drop in consumer demand might be said to be a result which causes respondents' picketing to fall literally within the statutory prohibition,

"it is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers." *Holy Trinity Church* v. *United States,* 143 U. S. 457, 459. See *United States* v. *American Trucking Assns.,* 310 U. S. 534, 543–544. When consumer picketing is employed only to persuade customers not to buy the struck product, the union's appeal is closely confined to the primary dispute. The site of the appeal is expanded to include the premises of the secondary employer, but if the appeal succeeds, the secondary employer's purchases from the struck firms are decreased only because the public has diminished its purchases of the struck product. On the other hand, when consumer picketing is employed to persuade customers not to trade at all with the secondary employer, the latter stops buying the struck product, not because of a falling demand, but in response to pressure designed to inflict injury on his business generally. In such case, the union does more than merely follow the struck product; it creates a separate dispute with the secondary employer.[20]

We disagree therefore with the Court of Appeals that the test of "to threaten, coerce, or restrain" for the purposes of this case is whether Safeway suffered or was likely to suffer economic loss. A violation of § 8 (b)(4)(ii)(B) would not be established, merely because respondents' picketing was effective to reduce Safeway's

[20] For example: If a public appeal directed only at a product results in a decline of 25% in the secondary employer's sales of that product, the corresponding reduction of his purchases of the product is due to his inability to sell any more. But if the appeal is broadened to ask that the public cease all patronage, and if there is a 25% response, the secondary employer faces this decision: whether to discontinue handling the primary product entirely, even though he might otherwise have continued to sell it at the 75% level, in order to prevent the loss of sales of other products.

sales of Washington State apples, even if this led or might lead Safeway to drop the item as a poor seller.

The judgment of the Court of Appeals is vacated and the case is remanded with direction to enter judgment setting aside the Board's order.

It is so ordered.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.

APPENDIX TO OPINION OF THE COURT.

"Notice to Storage [*sic*] Manager and Store Employees.

"We are advised that you are presently engaged in selling Washington State Apples.

"The 1960 crop of Washington State Apples is being packed by non-union firms, including 26 firms in the Yakima Valley. Prior to this year, the 26 Yakima Valley firms had been parties to a collective bargaining contract with Teamsters Union Local 760 of Yakima, Washington, but this year, when a new contract was being negotiated, the employers took the position that many of the basic provisions of the prior contract, such as seniority, overtime, protection against unjust discharge, grievance procedure and union security, should be weakened or eliminated entirely. These extreme demands plus a refusal to bargain in good faith led to a strike against the employer. The union made all possible efforts to avoid this strike as did outside agencies who were assisting in the negotiations. Even the Governor of the State of Washington, the Honorable Albert D. Rosellini, intervened and suggested that the parties agree to a fact finding committee or arbitration. The union agreed to these proposals but the employers declined.

"The employer's refusal to bargain in good faith has caused the Seattle office of the National Labor Relations

Board to prepare a complaint against the employers, charging them with unfair labor practices in violation of federal law.

"The strike at Yakima is still continuing and in order to win this strike, we must ask the consuming public not to purchase Washington State Apples.

"Therefore, we are going to place peaceful pickets at the entrances to your store for the purpose of trying to persuade the public not to buy Washington Apples. These pickets are being instructed to patrol peacefully in front of the consumer entrances of the store, to stay away from the delivery entrances and not to interfere with the work of your employees, or with deliveries to or pickups from your store. A copy of the instructions which have been furnished to the pickets is attached herewith.

"We do not intend that any of your employees cease work as a result of the picketing. We ask that you advise your employees of our intentions in this respect, perhaps by posting this notice on your store bulletin board.

"If any of your employees should stop work as a result of our program, or if you should have any difficulties as far as pickups and deliveries are concerned, or if you observe any of the pickets disobeying the instructions which they have been given, please notify the undersigned union representative at once and we will take steps to see that the situation is promptly corrected.

"As noted above, our information indicates that you are presently selling Washington State Apples. If, however, this information is not correct and you are selling apples exclusively from another state, please notify the undersigned and we will see that the pickets are transferred to another store where Washington State Apples are actually being sold.

"Thank you for your cooperation."

The instructions to pickets read as follows:

"Instructions to Pickets.

"Dear Picket:

"You are being asked to help publicize a nationwide consumer boycott aimed at non-union Washington State Apples. To make this program a success your cooperation is essential. Please read these instructions and follow them carefully.

"1. At all times you are to engage in peaceful picketing. You are forbidden to engage in any altercation, argument, or misconduct of any kind.

"2. You are to walk back and forth on the sidewalk in front of the consumer entrances to the grocery stores. If a particular store is located toward the rear of a parking lot, you are to ask the store manager for permission to walk back and forth on the apron or sidewalk immediately in front of the store; but if he denies you this permission, you are to picket only on the public sidewalk at the entrances to the parking lot. As far as large shipping centers are concerned, you will be given special instruction for picketing in such locations.

"3. You are not to picket in front of or in the area of any entrance to the store which is apparently set aside for the use of store employees and delivery men. As noted above, you are to limit your picketing to the consumer entrances to the store.

"4. This union has no dispute with the grocery stores, and you are forbidden to make any statement to the effect that the store is unfair or on strike. You are also forbidden to request that the customers not patronize the store. We are only asking that the customers not buy Washington State apples, when they are shopping at the store.

"5. Similarly, you are not to interfere with the work of any employees in the store. If you are asked by these employees what the picketing is about, you are to tell them it is an advertising or consumer picket and that

they should keep working. Likewise if you are asked by any truck drivers who are making pickups or deliveries what the picket is about, you are to advise that it is an advertising or consumer picket and that it is not intended to interfere with pickups or deliveries (i. e. that they are free to go through).

"6. If you are given handbills to distribute, please distribute these handbills in a courteous manner and if the customers throw them on the ground, please see that they are picked up at once and that the area is kept clean.

"7. You are forbidden to use intoxicating beverages while on duty or to have such beverages on your person.

"8. If a state official or any other private party should complain to you about the picketing, advise them you have your instructions and that their complaints should be registered with the undersigned union representative.

"9. These instructions should answer most of your questions concerning this program. However, if you have any additional questions or if specific problems arise which require additional instructions, please call the undersigned."

MR. JUSTICE BLACK, concurring.

Because of the language of § 8 (b)(4)(ii)(B) of the National Labor Relations Act and the legislative history set out in the opinions of the Court and of my Brother HARLAN, I feel impelled to hold that Congress, in passing this section of the Act, intended to forbid the striking employees of one business to picket the premises of a neutral business where the purpose of the picketing is to persuade customers of the neutral business not to buy goods supplied by the struck employer. Construed in this way, as I agree with Brother HARLAN that it must be, I believe, contrary to his view, that the section abridges freedom of speech and press in violation of the First Amendment.

"Picketing," in common parlance and in § 8 (b)(4)(ii)(B), includes at least two concepts: (1) patrolling, that is, standing or marching back and forth or round and round on the streets, sidewalks, private property, or elsewhere, generally adjacent to someone else's premises; (2) speech, that is, arguments, usually on a placard, made to persuade other people to take the picketers' side of a controversy. See MR. JUSTICE DOUGLAS concurring in *Bakery & Pastry Drivers* v. *Wohl,* 315 U. S. 769, 775. See also *Hughes* v. *Superior Court,* 339 U. S. 460, 464–465, and concurring opinions at 469. While "the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution," *Thornhill* v. *Alabama,* 310 U. S. 88, 102, patrolling is, of course, conduct, not speech, and therefore is not directly protected by the First Amendment. It is because picketing includes patrolling that neither *Thornhill* nor cases that followed it lend "support to the contention that peaceful picketing is beyond legislative control." *Giboney* v. *Empire Storage & Ice Co.,* 336 U. S. 490, 499–500. Cf. *Schneider* v. *State,* 308 U. S. 147, 160–161.[1] However, when conduct not constitutionally protected, like patrolling, is intertwined, as in picketing, with constitutionally protected free speech and press, regulation of the non-protected conduct may at the same time encroach on freedom of speech and press. In such cases it is established

[1] *Thornhill* v. *Alabama* and *Carlson* v. *California,* 310 U. S. 106, came down the same day. Neither held that picketing was constitutionally immune from legislative regulation or complete proscription. *Thornhill* held that a statute against picketing was too broad, inexact, and imprecise to be enforceable, and *Carlson* held, 310 U. S., at 112, "The sweeping and inexact terms of the ordinance disclose the threat to freedom of speech inherent in its existence." This principle of *Thornhill* and *Carlson* has been uniformly followed. See, *e. g., Edwards* v. *South Carolina,* 372 U. S. 229; *Henry* v. *City of Rock Hill,* 376 U. S. 776.

that it is the duty of courts, before upholding regulations of patrolling, "to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights" of speech and press. *Schneider* v. *State*, 308 U. S., *supra*, at 161. See also, *e. g.*, *N. A. A. C. P.* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 460–462; *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 438–439.

Even assuming that the Federal Government has power to bar or otherwise regulate patrolling by persons on local streets or adjacent to local business premises in the State of Washington,[2] it is difficult to see that the section in question intends to do anything but prevent dissemination of information about the facts of a labor dispute—a right protected by the First Amendment. It would be different (again assuming federal power) if Congress had simply barred or regulated all patrolling of every kind for every purpose in order to keep the streets around interstate businesses open for movement of people and property, *Schneider* v. *State*, *supra*, at 160–161; or to promote the public safety, peace, comfort, or convenience, *Cantwell* v. *Connecticut*, 310 U. S. 296, 304; or to protect people from violence and breaches of the peace by those who are patrolling, *Thornhill* v. *Alabama*, *supra*, at 105. Here the section against picketing was not passed for any of these reasons. The statute in no way manifests any government interest against patrolling as such, since the only patrolling it seeks to make unlawful is that which is carried on to advise the public, including consumers, that certain products have been produced by an employer with

[2] "*Municipal authorities*, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated." *Schneider* v. *State*, 308 U. S. 147, 160. (Emphasis supplied.) Cf. *Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 749.

whom the picketers have a dispute. All who do not patrol to publicize this kind of dispute are, so far as this section of the statute is concerned, left wholly free to patrol. Thus the section is aimed at outlawing free discussion of one side of a certain kind of labor dispute and cannot be sustained as a permissible regulation of patrolling. Cf. *Carlson* v. *California,* 310 U. S. 106, 112.

Nor can the section be sustained on the ground that it merely forbids picketers to help carry out an unlawful or criminal undertaking. Compare *Giboney* v. *Empire Storage & Ice Co., supra.* For the section itself contains a proviso which says that it shall not be construed "to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers . . . that a product or products are produced by an employer with whom . . . [the picketers have] a primary dispute . . . ." Thus, it is clear that the object of the picketing was to ask Safeway customers to do something which the section itself recognizes as perfectly lawful. Yet, while others are left free to picket for other reasons, those who wish to picket to inform Safeway customers of their labor dispute with the primary employer, are barred from picketing—solely on the ground of the lawful information they want to impart to the customers.

In short, we have neither a case in which picketing is banned because the picketers are asking others to do something unlawful nor a case in which *all* picketing is, for reasons of public order, banned. Instead, we have a case in which picketing, otherwise lawful, is banned only when the picketers express particular views. The result is an abridgment of the freedom of these picketers to tell a part of the public their side of a labor controversy, a subject the free discussion of which is protected by the First Amendment.

I cannot accept my Brother HARLAN'S view that the abridgment of speech and press here does not violate the

First Amendment because other methods of communication are left open. This reason for abridgment strikes me as being on a par with holding that governmental suppression of a newspaper in a city would not violate the First Amendment because there continue to be radio and television stations. First Amendment freedoms can no more validly be taken away by degrees than by one fell swoop.

For these reasons I concur in the judgment of the Court vacating the judgment of the Court of Appeals and remanding the case with directions to enter judgment setting aside the Board's order.

MR. JUSTICE HARLAN, whom MR. JUSTICE STEWART joins, dissenting.

The question in this case is whether a union involved in a labor dispute with an employer may lawfully engage in peaceful picketing at the premises of another employer in order to dissuade its customers from purchasing products of the first employer dealt in by the picketed establishment. Such activity, in the parlance of labor law, is known as secondary consumer picketing, the picketed employer being called the "secondary employer" and the other the "primary employer."

The question is controlled by § 8 (b) of the National Labor Relations Act[1] which makes it an unfair labor practice for a union

> "(4) . . . (ii) to threaten, coerce, or restrain any person engaged in commerce . . . where . . . an object . . . is . . . (B) forcing or requiring any person to cease using, selling . . . or otherwise dealing in the products of any other producer, processor,

[1] As amended by the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act) § 704 (a), 73 Stat. 542–543, 29 U. S. C. (Supp. IV, 1963) § 158 (b)(4).

> or manufacturer, or to cease doing business with any other person . . . ."

with a proviso that

> "nothing contained in . . . [the above provisions] shall be construed to prohibit publicity, *other than picketing,* for the purpose of truthfully advising the public, including consumers . . . that a product or products are produced by an employer with whom . . . [the union] has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution . . . ." (Emphasis added.)

The Labor Board found the Union's picketing at Safeway stores, though peaceful, unlawful *per se* under § 8 (b)(4)(ii)(B), and issued an appropriate order. The Court of Appeals reversed, holding the picketing lawful in the absence of any showing that Safeway had *in fact* been "threatened, coerced, or restrained" (113 U. S. App. D. C. 356, 360–363, 308 F. 2d 311, at pp. 315–318), and remanded the case to the Board for further proceedings. This Court now rejects (correctly, I believe) the Court of Appeals' holding, but nevertheless refuses to enforce the Board's order. It holds that although § 8 (b)(4)(ii)(B) does automatically outlaw peaceful secondary consumer picketing aimed at *all* products handled by a secondary employer, Congress has not, with "the requisite clarity" (*ante,* p. 63), evinced a purpose to prohibit such picketing when directed *only* at the products of the primary employer. Here the Union's picketing related only to Washington apples, not to all products carried by Safeway.

Being unable to discern in § 8 (b)(4)(ii)(B) or in its legislative history any basis for the Court's subtle narrowing of these statutory provisions, I must respectfully dissent.

I.

The Union's activities are plainly within the letter of subdivision (4)(ii)(B) of § 8 (b), and indeed the Court's opinion virtually concedes that much (*ante,* pp. 71–72). Certainly Safeway is a "person" as defined in those subdivisions; indubitably "an object" of the Union's conduct was the "forcing or requiring" of Safeway, through the picketing of its customers, "to cease . . . selling, handling . . . or otherwise dealing in" Washington apples, "the products of" another "producer"; and consumer picketing is expressly excluded from the ameliorative provisions of the proviso. See *supra,* pp. 80–81.

Nothing in the statute lends support to the fine distinction which the Court draws between general and limited product picketing. The enactment speaks pervasively of threatening, coercing, or restraining any person; the proviso differentiates only between modes of expression, not between types of secondary consumer picketing. For me, the Court's argument to the contrary is very unconvincing.

The difference to which the Court points between a secondary employer merely lowering his purchases of the struck product to the degree of decreased consumer demand and such an employer ceasing to purchase one product because of consumer refusal to buy any products, is surely too refined in the context of reality. It can hardly be supposed that in all, or even most, instances the result of the type of picketing involved here will be simply that suggested by the Court. Because of the very nature of picketing there may be numbers of persons who will refuse to buy at all from a picketed store, either out of economic or social conviction or because they prefer

to shop where they need not brave a picket line. Moreover, the public can hardly be expected always to know or ascertain the precise scope of a particular picketing operation. Thus in cases like this, the effect on the secondary employer may not always be limited to a decrease in his sales of the struck product. And even when that is the effect, the employer may, rather than simply reducing purchases from the primary employer, deem it more expedient to turn to another producer whose product is approved by the union.

The distinction drawn by the majority becomes even more tenuous if a picketed retailer depends largely or entirely on sales of the struck product. If, for example, an independent gas station owner sells gasoline purchased from a struck gasoline company, one would not suppose he would feel less threatened, coerced, or restrained by picket signs which said "Do not buy *X* gasoline" than by signs which said "Do not patronize this gas station." To be sure Safeway is a multiple article seller, but it cannot well be gainsaid that the rule laid down by the Court would be unworkable if its applicability turned on a calculation of the relation between total income of the secondary employer and income from the struck product.

The Court informs us that "Peaceful consumer picketing to shut off all trade with the secondary employer unless he aids the union in its dispute with the primary employer, is poles apart from such picketing which only persuades his customers not to buy the struck product," *ante*, p. 70. The difference was, it is stated, "well established in the state cases by 1940," *ante*, p. 64, note 7, that is, before the present federal enactment. In light of these assertions, it is indeed remarkable that the Court not only substantially acknowledges that the statutory language does not itself support this distinction (*ante*, pp. 71–72)[2]

[2] The Court seeks to find support for its limited interpretation of the language of § 8 (b) (4) in Congress' explicit mention of picketing

but cites no report of Congress, no statement of a legislator, not even the view of any of the many commentators in the area, in any way casting doubt on the applicability of § 8 (b)(4)(ii)(B) to picketing of the kind involved here.

II.

The Court's distinction fares no better when the legislative history of § 8 (b)(4)(ii)(B) is examined. Even though there is no Senate, House, or Conference Report which sheds light on the matter, that hardly excuses the Court's blinding itself to what the legislative and other background materials do show. Fairly assessed they, in my opinion, belie Congress' having made the distinction upon which the Court's thesis rests. Nor can the Court find comfort in the generalization that " 'In the sensitive area of peaceful picketing Congress has dealt explicitly with isolated evils which experience has established flow from such picketing' " (*ante*, pp. 62–63); in enacting the provisions in question Congress *was* addressing itself to a particular facet of secondary boycotting not dealt with in prior legislation, namely, peaceful secondary consumer picketing. I now turn to the materials which illuminate what Congress had in mind.

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in § 8 (b)(7). *Ante*, p. 68. The answer to this is twofold: First, § 8 (b)(7) regulates *only picketing* (in the context of organizational and recognitional disputes), while § 8 (b)(4) covers a wide range of activities, of which picketing is only one. Second, even if the argument had substance, it would not aid the Court's resolution of this case. The Court recognizes that § 8 (b)(4) does make illegal *per se* consumer picketing designed to accomplish a complete boycott of the secondary employer. It in effect admits, *ante*, pp. 71–72, that the language "threaten, coerce, or restrain" does not suggest any distinction between such picketing and that directed only at the struck product. It follows, even on the Court's own analysis, that the breadth of the language of § 8 (b)(4) provides no support for a view that Congress did not mean to render illegal *per se* the kind of picketing involved here.

It is clear that consumer picketing in connection with secondary boycotting was at the forefront of the problems which led to the amending of the Taft-Hartley Act by the Labor-Management Reporting and Disclosure Act of 1959. See, *e. g.*, remarks of Senator McClellan, 105 Cong. Rec. 3951, II Leg. Hist. 1007; remarks of Congressman Lafore, 105 Cong. Rec. 3928, II Leg. Hist. 1471; remarks of Congressman Griffin, *infra*, note 4. During Senate debate before passage of the Kennedy-Ervin bill, Senator Humphrey criticized an amendment proposed by Senator Goldwater to § 8 (b)(4) of the Taft-Hartley Act, which reflected the position of the Administration and was incorporated in substance in the Landrum-Griffin bill passed by the House. He said:

> "To distribute leaflets at the premises of a neutral employer to persuade customers not to buy a struck product is one form of consumer appeal. To peacefully picket the customer entrances, with a placard asking that the struck product not be bought, is another form. I fear that consumer picketing may also be the target of the words 'coerce, or restrain.' I fear that, in addition to the existing foreclosure of the union on strike from making any effective appeal to the employees of the so-called neutral employer, the union by this amendment is now to be effectively sealed off from even an appeal to the consumers." 105 Cong. Rec. 6232, II Leg. Hist. 1037.

Reporting on the compromise reached by the Conference Committee on the Kennedy-Ervin and Landrum-Griffin bills, Senator Kennedy, who chaired the Conference Committee, stated:

> "[T]he House bill prohibited the union from carrying on any kind of activity to disseminate informational material to secondary sites. They could not

> say that there was a strike in a primary plant. . . . Under the language of the conference, [ultimately resulting in present § 8 (b)(4)(ii)(B)] we agreed there would not be picketing at a secondary site. What was permitted was the giving out of handbills or information through the radio, and so forth." 105 Cong. Rec. 17720, II Leg. Hist. 1389.

Senator Morse, one day later, explained quite explicitly his objection to the relevant portion of the bill reported out of the Conference Committee, of which he was a member:

> "This bill does not stop with threats and with illegalizing the hot cargo agreement. It also makes it illegal for a union to 'coerce, or restrain.' This prohibits consumer picketing. What is consumer picketing? A shoe manufacturer sells his product through a department store. The employees of the shoe manufacturer go on strike for higher wages. The employees, in addition to picketing the manufacturer, also picket at the premises of the department store with a sign saying, 'Do not buy *X* shoes.' This is consumer picketing, an appeal to the public not to buy the product of a struck manufacturer." 105 Cong. Rec. 17882, II Leg. Hist. 1426.[3]

Later the same day, Senator Kennedy spoke further on the Conference bill and particularized the union rights protected by the Senate conferees:

> "(c) The right to appeal to consumers by methods other than picketing asking them to refrain from

[3] Senator Morse continued by quoting *Goldfinger* v. *Feintuch*, 276 N. Y. 281, 11 N. E. 2d 910, which he believed established the *legitimacy* of such picketing. The Court now cites the same case, *ante*, p. 64, as a state decision recognizing the distinction on which the opinion is based, apparently without reflecting on the anomaly that the case is used in debate as an example of the kind of activity § 8 (b)(4)(ii)(B) prohibits.

buying goods made by nonunion labor and to refrain from trading with a retailer who sells such goods.

"Under the Landrum-Griffin bill it would have been impossible for a union to inform the customers of a secondary employer that that employer or store was selling goods which were made under racket conditions or sweatshop conditions, or in a plant where an economic strike was in progress. We were not able to persuade the House conferees to permit picketing in front of that secondary shop, but we were able to persuade them to agree that the union shall be free to conduct informational activity short of picketing. In other words, the union can hand out handbills at the shop, can place advertisements in newspapers, can make announcements over the radio, and can carry on all publicity short of having ambulatory picketing in front of a secondary site." 105 Cong. Rec. 17898–17899, II Leg. Hist. 1432.

The Court does not consider itself compelled by these remarks to conclude that the Conference Committee meant to prohibit *all* secondary consumer picketing. A fair reading of these comments, however, can hardly leave one seriously in doubt that Senator Kennedy believed this to be precisely what the Committee had done; the Court's added emphasis on the word "and" (*ante,* p. 70) is, I submit, simply grasping at straws, if indeed the phrase relied on does not equally well lend itself to a disjunctive reading. Cf. *DeSylva* v. *Ballentine,* 351 U. S. 570, 573. The complicated role the Court assigns to the publicity proviso (*ante,* pp. 70–71) makes even less understandable its failure to accord to the remarks of Senator Kennedy their proper due. The proviso, according to the Court's interpretation, is unnecessary in regard to picketing designed to effect a boycott of the primary product and comes into play only if a complete boycott of the secondary employer is sought. Had this ingenious interpreta-

tion been intended, would not Senator Kennedy, who was at pains to emphasize the scope of activities still left to unions, have used it to refute the criticisms of Senator Morse made only shortly before?

Further, Senator Goldwater spoke in favor of the Conference bill and pointed out that in contrast to the Senate bill, which he had opposed, "[t]he House bill . . . closed up every loophole in the boycott section of the law including the use of a secondary consumer picket line . . . ." 105 Cong. Rec. 17904, II Leg. Hist. 1437.

The Court points out that the Senate had no Conference Report when it passed the compromise bill and that it had only Senator Kennedy's statement of the purpose of the proviso. (*Ante*, pp. 69–70.) But I am wholly at a loss to understand how on that premise (particularly when Senator Kennedy's remarks are supplemented by the comments of one Senator (Morse) who thought the final bill too harsh and those of another (Goldwater) who believed the Senate bill too weak) one can conclude that the members of the Senate did not mean by their vote to outlaw all kinds of secondary consumer picketing.

A reading of proceedings in the House of Representatives leads to a similar conclusion regarding the intent of that body. In criticism of the Landrum-Griffin bill, Congressman Madden stated, "It would prohibit any union from advising the public that an employer is unfair to labor, pays substandard wages, or operates a sweatshop . . . ." 105 Cong. Rec. 15515, II Leg. Hist. 1552. Since the theory of the majority regarding the publicity proviso adopted by the Conference is that it is redundant in situations where the union seeks only a boycott of the struck product, the sweep of Congressman Madden's comment is plainly at odds with the Court's view of § 8 (b) (4)(ii)(B).

Indicative of the contemporaneous understanding is an analysis of the bill prepared by Congressmen Thompson

and Udall and inserted in the Congressional Record, in which a hypothetical case, as directly in point as the department store example used by Senator Morse, is suggested:

> "Suppose that the employees of the Coors Brewery were to strike for higher wages and the company attempted to run the brewery with strikebreakers. Under the present law, the union can ask the public not to buy Coors beer during the strike. It can picket the bars and restaurants which sold Coors beer with the signs asking the public not to buy the product. It can broadcast the request over the radio or in newspaper advertisements.
>
> "The Landrum bill forbids this elementary freedom to appeal to the general public for assistance in winning fair labor standards." 105 Cong. Rec. 15540, II Leg. Hist. 1576.

The majority (*ante*, pp. 67–68) relies on remarks made by Congressman Griffin, the bill's co-sponsor. When read in context what seems significant about them is that the Congressman nowhere suggests that there can be some kind of consumer picketing which does not coerce or restrain the secondary employer. Nor does he intimate any constitutional problem in prohibiting picketing that follows the struck product.[4]

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[4] The colloquy between Congressmen Griffin and Brown on the Landrum-Griffin bill, from which the excerpt of the Court is taken, reflects a plain intent to outlaw consumer picketing; the caveat regarding the right of free speech appears to be only an acknowledgment of the general principle that any legislation is subject to constitutional limitations:

"Mr. BROWN of Ohio. . . .

"My question concerns the picketing of customer entrances to retail stores selling goods manufactured by a concern under strike. Would that situation be prohibited under the gentleman's bill?

"Mr. GRIFFIN. Let us take for example the case that the President talked about in his recent radio address. A few news-

After passage of the Landrum-Griffin bill, Congressman Thompson presented to the House an analysis of the differences between the House and Senate bills prepared

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papers reported that the secondary boycott described by the President would be prohibited under the present act. It will be recalled that the case involved a dispute with a company that manufactured furniture. Let us understand that we are not considering . . . the right to picket at the manufacturing plant where the dispute exists.

"Mr. BROWN. That is right. We are looking only at the problem of picketing at a retail store where the furniture is sold.

"Mr. GRIFFIN. Then, we are not talking about picketing at the place of the primary dispute. We are concerned about picketing at a store where the furniture is sold. Under the present law, if the picketing happens to be at the employee entrance so that clearly the purpose of the picketing is to induce the employees of the secondary employer not to handle the products of the primary employer, the boycott could be enjoined.

"However, if the picketing happened to be around at the customer entrance, and if the purpose of the picketing were to coerce the employer not to handle those goods, then under the present law, because of technical interpretations, the boycott would not be covered.

"Mr. BROWN. In other words, the Taft-Hartley Act does not cover such a situation now?

"Mr. GRIFFIN. The way it has been interpreted.

"Mr. BROWN. But the Griffin-Landrum bill would?

"Mr. GRIFFIN. Our bill would; that is right. If the purpose of the picketing is to coerce or to restrain the employer of that second establishment, to get him not to do business with the manufacturer—then such a boycott could be stopped.

"Mr. BROWN. . . . Would that same rule apply to the picketing at the customer entrances, for instance, of plumbing shops, or newspapers that might run the advertising of these concerns, or radio stations that might carry their program?

"Mr. GRIFFIN. Of course, this bill and any other bill is limited by the constitutional right of free speech. If the purpose of the picketing is to coerce the retailer not to do business with the manufacturer, whether it is plumbing—

"Mr. BROWN. Advertising.

"Mr. GRIFFIN. Advertising, or anything else, it would be covered by our bill. It is not covered now." 105 Cong. Rec. 15672–15673, II Leg. Hist. 1615.

by Senator Kennedy and himself. This described the nature of secondary boycotts:

> "In all cases of secondary boycotts two employers are involved. The union brings pressure upon the employer with whom it has a dispute (called the 'primary' employer) by inducing the employees of another employer (called the 'secondary' employer) to go on strike—or the customers not to patronize—until the secondary employer stops dealing with the primary employer. Or the union may simply induce the employees of the secondary employer to refuse to handle or work on goods—*or the customers not to buy*—coming from the primary employer as a way of putting pressure upon him." 105 Cong. Rec. 16589, II Leg. Hist. 1706. (Emphasis added.)

The prepared analysis then discusses the effect of the House bill on consumer picketing, 105 Cong. Rec. 16591, II Leg. Hist. 1708. To describe activities outlawed by the House bill, it uses the same "Coors beer" hypothetical which the earlier analysis had employed. This analysis shows beyond peradventure that Senator Kennedy did believe the language of the bill to proscribe *all* consumer picketing and indicates that this view was squarely placed before the House. The Court adverts to this analysis (*ante,* p. 69), as the genesis of the publicity proviso, but fails to acknowledge the difficulty of squaring the great concern of the Senate conferees to protect freedom of communication with the Court's supposition that the House bill closed off no lines of communication so long as the union appeal was limited to boycott of the struck products.

Congressman Griffin placed in the Congressional Record, 105 Cong. Rec. 18022, II Leg. Hist. 1712, a preliminary report on the Conference agreement. A summary analysis of Taft-Hartley amendments states that the

House bill "Prohibits secondary customer picketing at retail store which happens to sell product produced by manufacturer with whom union has dispute." The Conference agreement, according to this summary, "Adopts House provision with clarification that other forms of publicity are not prohibited; also clarification that picketing at primary site is not secondary boycott."

When Congressman Thompson spoke to the Conference agreement, he reiterated his view of the House bill and of its modification, 105 Cong. Rec. 18133, II Leg. Hist. 1720, 1721. Specifically he stated, "All appeals for a consumer boycott would have been barred by House bill."

In the light of the foregoing, I see no escape from the conclusion that § 8 (b)(4)(ii)(B) does prohibit *all* consumer picketing. There are, of course, numerous times in the debates of both houses in which consumer picketing is referred to generally or the reference is made with an example of an appeal to consumers not to purchase at all from the secondary employer. But it is remarkable that every time the possibility of picketing of the sort involved in this case was considered, it was assumed to be prohibited by the House bill. Admittedly, in the House, appeals to refrain from purchase of the struck product were discussed only by opponents of the House bill; however, only one of two inferences can be drawn from the silence of the bill's supporters. Either the distinction drawn by this Court was not considered of sufficient significance to require comment, or the proponents recognized a difference between the two types of consumer picketing but assumed that the bill encompassed both. Under either supposition, the conclusion reached by the Court in regard to the picketing involved here is untenable.

III.

Under my view of the statute the constitutional issue is therefore reached. Since the Court does not discuss it, I am content simply to state in summary form my reasons for believing that the prohibitions of § 8 (b)(4)(ii)(B), as applied here, do not run afoul of constitutional limitations. This Court has long recognized that picketing is "inseparably something more [than] and different" from simple communication. *Hughes* v. *Superior Court,* 339 U. S. 460, 464; see, *e. g., Building Service Employees* v. *Gazzam,* 339 U. S. 532, 537; *Bakery Drivers* v. *Wohl,* 315 U. S. 769, 776 (concurring opinion of DOUGLAS, J.). Congress has given careful and continued consideration to the problems of labor-management relations, and its attempts to effect an accommodation between the right of unions to publicize their position and the social desirability of limiting a form of communication likely to have effects caused by something apart from the message communicated, are entitled to great deference. The decision of Congress to prohibit secondary consumer picketing during labor disputes is, I believe, not inconsistent with the protections of the First Amendment, particularly when, as here, other methods of communication are left open.[5]

Contrary to my Brother BLACK, I think the fact that Congress in prohibiting secondary consumer picketing has acted with a discriminating eye is the very thing that renders this provision invulnerable to constitutional attack. That Congress has permitted other picketing which is likely to have effects beyond those resulting from the "communicative" aspect of picketing does not, of course, in any way lend itself to the conclusion that

[5] I mean to intimate no view on the constitutionality of the regulation or prohibition of picketing which publicizes something other than a grievance in a labor-management dispute.

Congress here has aimed to "prevent dissemination of information about the facts of a labor dispute" (*ante,* p. 78). Even on the highly dubious assumption that the "non-speech" aspect of picketing is always the same whatever the particular context, the social consequences of the "non-communicative" aspect of picketing may certainly be thought desirable in the case of "primary" picketing and undesirable in the case of "secondary" picketing, a judgment Congress has indeed made in prohibiting secondary but not primary picketing.

I would enforce the Board's order.